



INTERIOR BOARD OF INDIAN APPEALS

Peoria Tribe of Indians of Oklahoma v. Muskogee Area Director,
Bureau of Indian Affairs

27 IBIA 113 (01/05/1995)

Related Board case:
32 IBIA 81



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

PEORIA TRIBE OF INDIANS OF OKLAHOMA

v.

ACTING MUSKOGEE AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 94-109-A

Decided January 5, 1995

Appeal from a decision declining to release unclaimed judgment fund per capita payments to the Peoria Tribe.

Reversed and remanded.

1. Indians: Judgment Funds--Statutory Construction: Generally--
Statutory Construction: Indians

Where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment.

2. Indians: Judgment Funds

Under 25 U.S.C. § 1226 (1988), unclaimed judgment fund per capita shares of "Peoria descendants" revert to the Peoria Tribe of Indians of Oklahoma.

APPEARANCES: Coy D. Morrow, Esq., Miami, Oklahoma, for appellant.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Peoria Tribe of Indians of Oklahoma seeks review of an April 18, 1994, decision of the Acting Muskogee Area Director, Bureau of Indian Affairs (Area Director; BIA), declining to release unclaimed judgment fund per capita payments of "Peoria descendants" to appellant. For the reasons discussed below, the Board reverses the Area Director's decision and remands this matter for further action, as described below.

Procedural Background

On June 9, 1993, appellant's Chief wrote to the Superintendent, Miami Agency, BIA, concerning two BIA judgment fund accounts for "Peoria descendants," derived from awards in Indian Claims Commission Dockets 313, 314-A, and 314-B. The Chief sought information as to why the funds in the accounts, which were unclaimed, should not revert to appellant.

The Superintendent conveyed the inquiry to the Area Director, who responded on June 22, 1993, stating that BIA was prohibited by statute from turning the funds over to appellant because the Peoria descendants were not members of a Federally recognized tribe. The Area Director cited 25 U.S.C. § 164 (1988), 1/ which authorizes the restoration to tribal ownership of unclaimed per capita payments of tribal members but also provides that

if such individual is a member of an Indian tribe or group that has no governing body recognized by the Secretary of the Interior as authorized to act on behalf of the tribe or group, such unpaid share and interest shall be regarded as not capable of restoration to a tribal group or entity and shall be deposited in the general fund of the Treasury of the United States. 2/

On July 21, 1993, appellant's counsel sought an opinion from the Tulsa Field Solicitor on the matter. After consulting with the Area Director concerning the request, the Field Solicitor provided him with a legal opinion. The opinion, dated April 6, 1994, concluded that the position taken by the Area Director in his June 22, 1993, memorandum was justified.

On April 18, 1994, the Area Director transmitted the Field Solicitor's opinion to appellant, in essence adopting the opinion as his decision. He informed appellant that it could appeal the decision to the Board. Appellant did so. Only appellant filed a brief.

Historical Background

The Board borrows from the detailed recitation of facts in the Field Solicitor's April 6, 1994, opinion:

1/ All further references to the United States Code are to the 1988 edition.

2/ 25 U.S.C. § 164 provides in its entirety:

"Unless otherwise specifically provided by law, the share of an individual member of an Indian tribe or group in a per capita or other distribution, individualization, segregation, or proration of Indian tribal or group funds held in trust by the United States, or in an annuity payment under a treaty, heretofore or hereafter authorized by law, and any interest earned on such share that is properly creditable to the individual shall be restored to tribal ownership if for any reason such share cannot be paid to the individual entitled thereto and remains unclaimed for a period of six years from the date of the administrative directive to make the payment, or one year from September 22, 1961, whichever occurs later: Provided, That if such individual is a member of an Indian tribe or group that has no governing body recognized by the Secretary of the Interior as authorized to act on behalf of the tribe or group, such unpaid share and interest shall be regarded as not capable of restoration to a tribal group or entity and shall be deposited in the general fund of the Treasury of the United States."

By virtue of the Treaty of February 23, 1867, 15 Stat. 513, the "Confederated Tribes of Peorias, Kaskaskias Weas and Piankashaws" agreed to remove as a single body from Kansas to a reservation in Indian Territory in what is now Ottawa County, Oklahoma. One of the provisions of the treaty gave individual Indians the option of disassociating themselves from the confederation and remaining in Kansas to become United States citizens. Those who chose citizenship, referred to as "Citizen Peorias", were awarded their share of tribal assets. [3/] Lists of the Citizen Peoria and the tribal members who removed to Indian Territory were made and maintained by the Secretary of the Interior.

* * * In 1940, the confederation members and their descendants incorporated under the Oklahoma Indian Welfare Act [(OIWA)], 25 U.S.C. §§ 501, et seq., and became officially recognized by the Secretary of the Interior as a single tribe known as the "Peoria Tribe of Indians of Oklahoma [i.e., appellant]."

[Several claims were filed in the Indian Claims Commission on behalf of the Peoria, Kaskaskia, Wea, and Piankashaw Tribes. These were Dockets 65, 66, 99, 289, 313, 314, 314-A through 314-E and 338. The Commission held] on March 26, 1956, that [appellant's OIWA charter] gave [appellant] the exclusive right to represent the former tribes of the confederacy in prosecution of their claims, but that [appellant] did not become the successor in interest to the respective claims of each tribe. See 4 Ind. Cl. Comm. 246. [In 1963, a judgment was entered in Docket 314, concerning a claim on behalf of the Wea Tribe. Appellant appealed it to the Court of Claims, 4/ arguing] that the judgment should have been awarded solely to [appellant]. The appellate court denied the appeal, stating that how the award was to be paid and precisely who could participate were questions for congressional and administrative determination. * * * See Peoria Tribe of Indians of Oklahoma et al. v. United States, 169 Ct.Cl. 1009 (March 12, 1965).

(Field Solicitor's Opinion at 2-3).

While the claims were pending before the Indian Claims Commission, Congress enacted legislation providing for termination of the Federal

3/ It appears that most if not all of the Peoria descendants who participated in the judgment fund distribution for Dockets 313, 314-A, and 314-B were descended from these "Citizen Peorias."

4/ In October 1982, the Court of Claims became the United States Claims Court and, in October 1992, it became the United States Court of Federal Claims. Throughout this decision, the Board uses the name "Court of Claims," the name by which the court was known during most of the time relevant to this appeal.

trust relationship with appellant and its members. Act of August 2, 1956, 70 Stat. 937. Under the statute, termination was to take effect 3 years after enactment, except that appellant's OIWA charter and the Secretary's powers and responsibilities under the tribe's constitution were to continue until final adjudication of all of appellant's claims pending before the Indian Claims Commission and the Court of Claims.

On July 31, 1970, following entry of judgments and appropriation of funds to pay awards in Dockets 65, 314, and 314-E, Congress enacted a statute (1970 Act), now codified at 25 U.S.C. §§ 1221-1227, governing the distribution of judgment funds in these dockets, as well as the as-yet undecided Dockets 99, 289, 313, 314-A, B, C, and D, and 338.

25 U.S.C. § 1221(a) provides:

The Secretary of the Interior shall prepare a roll of all persons who meet the following requirements: (1) they were born on or prior to and were living on July 31, 1970; (2) their names or the name of a lineal ancestor from whom they claim eligibility appears on (a) the final roll of the Peoria Tribe of Indians of Oklahoma, pursuant to [the Act of August 2, 1956, 70 Stat. 937], or (b) the January 1, 1937, census of the Peoria Tribe, or (c) the 1920 census of the Peoria Tribe, or (d) the Indian or Citizen Class lists pursuant to the Treaty of February 23, 1867 (15 Stat. 520), or (e) the Schedule of Persons or Families composing the United Tribes of Weas, Piankashaws, Peorias, and Kaskaskias, annexed to the Treaty of May 30, 1854.

25 U.S.C. § 1224 provides, *inter alia*, that the rolls were to be updated, as of the date of appropriation of funds, for the awards in Dockets 99, 289, 313, 314-A, B, C, and D, and 338.

25 U.S.C. § 1226 provides:

Any per capita share, whether payable to a living enrollee or to the heirs or legatees of a deceased enrollee, which the Secretary of the Interior is unable to deliver within two years after the date the check is issued, and all unexpended tribal and judgment funds set aside for tribal roll preparation and distribution, shall revert to the Peoria Tribe, and all claims for such per capita shall thereafter be barred forever.

On October 19, 1973, Congress enacted a general statute governing the use and distribution of judgment funds (1973 Act), as amended, 25 U.S.C. §§ 1401-1407. 25 U.S.C. § 1401(a) provides:

Notwithstanding any other law, all use or distribution of funds appropriated in satisfaction of a judgment of the Indian Claims Commission or the [Court of Claims] in favor of any Indian tribe, band, group, pueblo, or community * * *, together with any investment income earned thereon, after payment of attorney fees

and litigation expenses, shall be made pursuant to the provisions of this chapter.

The 1973 Act directs the Secretary of the Interior to prepare distribution plans for awards made by the Indian Claims Commission or the Court of Claims and to submit the plans to Congress. 25 U.S.C. § 1403. It also requires, *inter alia*, that not less than 20 percent of a tribe's funds be programmed for common tribal needs. 25 U.S.C. § 1403(b)(5).

On May 15, 1978, Congress repealed the 1956 termination statute and restored full Federal recognition to appellant and its members. 25 U.S.C. §§ 861-861c (1978 Act).

In 1979, funds were appropriated to pay awards in Dockets 313, 314-A, and 314-13. A distribution plan was prepared by BIA in accordance with the 1973 Act. It was submitted to Congress on July 12, 1983; became effective on November 3, 1983; and was published in the Federal Register on December 28, 1983, 48 ER 57174.

The plan provided:

The Secretary of the Interior * * * shall divide the funds between the two beneficiary entities, on the basis of the number of enrollees of each group as designated on the 1970 Peoria Tribe and the Peoria Descendants payment roll, prepared pursuant to the [1970 Act], in terms of 1640/2075ths (or 79.036%) to the Peoria Tribe of Oklahoma, and 435/2075ths (or 20.9639%) to the Peoria Descendants.

The plan set out separate provisions for distribution of the tribal share and the share of Peoria descendants. It provided for per capita distribution of 80 percent of the tribal share to "all tribal members born on or prior to and living on" November 3, 1983. With respect to the share of Peoria descendants, which was to be distributed per capita in its entirety, the plan required the Secretary to bring current to November 3, 1983, a roll approved on September 4, 1973, pursuant to the 1970 Act. It further required the Secretary to publish notice of the roll preparation in the Federal Register. Notice of the roll preparation was published on June 12, 1984, and provided that applicants for enrollment as Peoria descendants were to submit their applications by November 2, 1984. 49 FR 24179 (June 12, 1984). As far as the Board is aware, distribution was made in accordance with the 1983 plan, except for the unclaimed shares at issue here.^{5/}

Discussion and Conclusions

Appellant's principal contention is that, under section 6 of the 1970 Act, 25 U.S.C. § 1226, all unclaimed per capita shares were to revert to

^{5/} The Field Solicitor's opinion indicates that \$6,820.17 remained unclaimed as of the date of the opinion.

appellant, regardless of whether the individuals who failed to claim their shares were tribal members or Peoria descendants. In order to address this contention properly, it is necessary to analyze the relation between the various statutes described above.

25 U.S.C. § 164, upon which the Area Director based his decision, derives from the Act of September 22, 1961 (1961 Act), the principal purpose of which was to authorize the restoration of unclaimed shares of tribal funds to tribal ownership. ^{6/} As indicated above, the portion of the 1961 Act relied upon by the Area Director was a proviso which required that unclaimed shares of individuals who were not members of Federally recognized tribes be deposited in the Treasury.

25 U.S.C. § 1226 derives from a statute enacted in 1970 for the specific benefit of the Confederated Tribes of Weas, Piankashaws, Peorias, and Kaskaskias. Unlike the 1961 Act, section 1226 does not distinguish between the shares of tribal members and the shares of non-members but provides that any unclaimed share shall revert to the Peoria Tribe. Clearly, a pivotal question in the analysis here is whether the proviso in the 1961 Act is applicable to per capita shares which are subject to the 1970 Act. For purposes of this part of the discussion, the Board assumes that section 1226 has not been repealed or modified by legislation enacted subsequent to 1970.

Section 1226 addresses the same subject matter as the 1961 Act. One might ask why Congress included this provision in the 1970 Act when it could simply have left the matter to be governed by the 1961 Act. There is no discussion of this point in the legislative history of the 1970 Act. It is possible, however, that in light of appellant's status as a terminated, or quasi-terminated, tribe, Congress was uncertain as to whether appellant was covered by the tribal restoration provision of the 1961 Act. ^{7/} Whatever the reason for including the reversion provision in the

^{6/} The legislation was requested by the Department of the Interior, which noted that the disposition of these unclaimed shares presented a problem. "Generally," the Department's report stated, "such shares are eventually deposited in the Treasury of the United States subject to claim if the person ever appears, or they remain in the tribal trust fund which has been segregated." H.R. Rep. No. 1005, 87th Cong., 1st Sess. (1961), reprinted in 1961 U.S. Code Cong. & Admin. News 2835, 2837. The Department also noted that several tribes had requested legislation such as it was proposing. Id.

^{7/} In 1970, appellant's government-to-government relationship with the United States was still in place to some extent, although the trust relationship had been terminated. As explained in the Department's report on the bill that became the 1970 Act:

"Federal trust relationship over the affairs of the Peoria Tribe of Oklahoma and its members terminated effective August 2, 1959, pursuant to the act of August 2, 1956 (70 Stat. 937), and Federal services are no longer provided to individuals of the tribe. The Department still recognizes the tribal entity in accordance with section 4 (b) of the 1956 act, which provides that the tribe's corporate charter will be revoked

1970 Act, however, the language of the provision is broad enough to encompass the shares of non-tribal members as well as those of tribal members. On its face, section 1226 appears to require that all unclaimed shares, including those of non-members, revert to appellant. 25 U.S.C. § 1221 buttresses this interpretation in that it provides for the preparation of a single roll, to include individuals who qualify under various criteria. Nothing in the remainder of the 1970 Act refutes this interpretation or in any way indicates that the shares of non-members were to be treated differently than the shares of tribal members.

The brief discussion of this provision in the legislative history is consistent with the statutory language. See, e.g., the remarks of Rep. Aspinall on the House floor: "Any per capita share that is not claimed within 3 years from the date the bill is enacted [8/], and any unused funds that were reserved for the preparation of the roll, will escheat to the Peoria Tribe." 116 Cong. Rec. 19,723 (1970). See also S. Rep. No. 870, 91st Cong., 2d Sess. (1970); H.R. Rep. No. 1153, supra.

[1] It is a well established rule of statutory construction that, "[w]here there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment." Morton v. Mancari, 417 U.S. 535, 500-551 (1974). See also, e.g., Crawford Fitting Co. v. J. T. Gibbons, Inc., 482 U.S. 437, 445 (1987); Radzanower v. Touche Ross & Co., 426 U.S. 148, 153 (1976). Even where a general statute is enacted after a specific one, the specific statute controls, absent a clear intention otherwise. Where the specific statute is the later enacted of the two, it is even more clear that, absent a clear intention to the contrary, the specific statute controls. The Board finds that neither the 1970 Act nor its legislative history reflects any intent on the part of Congress to make the proviso in the 1961 Act controlling in distributions under the 1970 Act. Therefore it finds that the 1970 Act controls, unless later legislation has altered the balance. The Board proceeds to address the relevant later legislation.

The 1973 Act was intended to supersede earlier legislation to some extent, as is evident from its initial provision that "[n]otwithstanding any other law," use and distribution of judgment funds is to be made in accordance with the act. 25 U.S.C. § 1401(a). The 1973 Act, however, contains no provision concerning the disposition of unclaimed per capita payments. Thus, it appears unlikely that it was intended to supersede the provisions of either the 1961 Act or the 1970 Act in this regard. The Field

fn. 7 (continued)

and the authority of the Secretary over actions taken under the constitution of the tribe will be terminated when all claims now pending before the Indian Claims Commission or the Court of Claims have finally been adjudicated."

H.R. Rep. 1153, 91st Cong., 2d Sess. 7 (1970).

8/ This deadline was later amended. See Remarks of Sen. McGovern, 116 Cong. Rec. 24,436 (1970).

Solicitor concluded that the 1973 Act did not repeal 25 U.S.C. § 1226. See Field Solicitor's Opinion at 8. The Board agrees. There is no conflict between the 1973 Act and section 1226 and therefore no reason to conclude that a repeal was effected.

The only remaining statute requiring consideration is the 1978 statute restoring full Federal recognition to appellant. Because appellant's status had been restored before the 1983 distribution plan was prepared, and because the 1973 Act required that at least 20 percent of tribal funds be programmed for tribal purposes, BIA prepared two rolls, one for appellant's members and one for Peoria descendants. 25 U.S.C. § 1221 may perhaps be deemed modified by the 1973 and 1978 Acts, to the extent that, in order to accommodate the 20-percent programming requirement of the 1973 Act, two rolls instead of one were necessary. But such a modification would have no obvious relevance to the reversion provision in section 1226. Reversions can occur whether the individuals who fail to claim their shares appear on a single roll or on two separate rolls.

[2] The Board sees nothing in the 1978 Act, or the 1973 and 1978 Acts taken together, that repeals or modifies the reversion provision in 25 U.S.C. § 1226. Accordingly, the Board holds that 25 U.S.C. § 1226 requires that the unclaimed shares of Peoria descendants revert to appellant.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the Area Director's April 18, 1994, decision is reversed. This matter is remanded to him for release of the unclaimed funds to appellant in accordance with the terms of 25 U.S.C. § 1226.

//original signed
Anita Vogt
Administrative Judge

I concur:

//original signed
Kathryn A. Lynn
Chief Administrative Judge